

Q&A FROM AUGUST 9 PUBLIC MEETING ON BUFFER PROVISIONS

Q. Would these rules/regulations be retroactive if the permits have already been approved?

A. If the zoning and development application has been submitted prior to the ordinance being passed, then no, the buffer regulations would not be retroactive. The Enforcement Ordinance and fine structure would be applied to any violations occurring after the effective date of the ordinance.

Q. Did the State take statewide topography into account when setting the buffers in the state regulations?

A. The state took in the minimum and that actually goes against the studies that were done. As an example, the NC Wildlife Resources Commission did extensive research for all types of terrain and cover material associated with aquatic buffers, and specifically recommended a minimum of 50 ft to 100 ft buffers. Their minimum suggested buffer width was adopted as part of the proposed stormwater regulations. Why the legislators did not adopt these recommendations is not known.

Q. What is the scientific basis for the buffer requirements that are being proposed?

A. See above. Much research has been done on buffers. The following link to the City's Web site will provide these technical documents and other useful links on buffers.

[ftp://www.ashevillenc.gov/Engineering/Stormwater Services/Buffer Information/](ftp://www.ashevillenc.gov/Engineering/Stormwater_Services/Buffer_Information/)

Q. How did you determine the proposed buffer width?

A. See above.

Q. Is this (buffer width) an ideal standard?

A. No, as all the research on buffer widths suggest that to have a dramatic impact on water quality, the ideal buffer width should be between 100 ft and 300 ft. When determining the proposed buffer widths, we determined what goals and pollutants we were most concerned about with regard to the typical urbanized stream corridors in Asheville's jurisdiction. The critical issues were reducing sediment loading from runoff and bank stabilization. The proposed width is the minimum to accomplish these goals.

Q. Are the buffer requirements for the State of North Carolina made up of two 15 ft sections, and not just one 30 ft section?

A. The State requirement is a 30 ft minimum for as built upon area as indicated in Session Law 2006-246, Senate Bill 1566 and also in 143-214.6. There has been some confusion about this in the past because a separate buffer requirement exists in the NC Sedimentation Pollution Control Act and GS 113A-57, which require an aquatic buffer based width required to trap sediment. Guidance provided by North Carolina Department of Natural Resources indicates a minimum 15 ft buffer for non-trout waters and a 25 ft buffer for trout waters.

Q. Does the buffer width have to be applied uniformly along the water? (For example, is the required width for a 1 ft wide stream the same as for a 50 ft river?)

A. Yes, the minimum width is uniform and is the same minimum width for all waters to which the rule applies. The reason is that the required minimum buffer width is a function of the attributes of the land adjacent to the stream and not the stream size. These are minimum buffer widths, and the current State and City rules require aquatic buffers to increase based on the natural slope leading to the waters.

Q. Is this pollution removal efficiency uniform across the buffer width?

A. No, the removal efficiency is not uniform or linear across the buffer width. The removal efficiency is a logarithmic function; meaning that at a certain “break point” the increase in removal efficiency significantly decreases for each foot the buffer width is increased. This break point varies greatly for different pollutants, types of ground cover, slope steepness, etc. When determining the minimum width, the break points for the specific pollutant removals we were targeting were considered.

Q. Is the definition of Land Disturbance the same as Land Disturbance activity as contained in the UDO?

A. Yes, it is the same definition.

Q. Is the definition of substantial improvement the same as in the UDO?

A. Yes, it is the same definition.

Q. How is the top of bank determined where a stream or river courses against a continuous vertical slope? Must you go to the top of the slope to begin measuring your buffer?

A. The top of bank would have to be determined in the field by a site visit or survey. We typically do not have sheer vertical slopes in this area. In that case, we would look for the shallow break that would show flood stage and consider that the top of bank. We would also have to look at the natural angle of slope to determine the buffer width per the state regulations in GS 113A-57.

Q. Are streams in pipes or box culverts included?

A. Streams that are in pipes or box culverts are already considered to be encroached on, so there would be no buffer to protect.

Q. Land disturbing by state and federal agencies is exempt from these ordinances. Why?

A. Per the state regulations, under the enabling section, the city can not regulate the State or Federal Government. They have their own permitting departments that issue their permits.

Q. Does this include protection for intermittent streams? If not, why not?

A. Yes, it does. The surface waters that the buffer rules apply to are specifically indicated in the State Statutes. As stated in the General Assembly of North

Carolina, Session Law 2006-246, Senate Bill 1566, Section 9 (d), "Permittees, delegated programs, and regulated entities must require built-upon areas to be at least 30 feet landward of all perennial and intermittent surface waters. For purposes of this section, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geological Survey (USGS)." This will be listed in the definitions section of the Ordinance.

Q. What is the standard for determining the requirements for something to be considered a stream?

A. See above.

Q. Can property owners who are near streams continue to farm and till their land?

A. Agriculture is exempt from the City requirements and review as mandated by the General Statutes. The City of Asheville's Ordinance would not apply to these activities or lands, though other State requirements may be applicable.

Q. Can you have a garden by a stream?

A. Horticulture and gardening is considered Agriculture and is included in the above.

Q. How will this impact MSD when replacing sewer lines?

A. MSD has the power of eminent domain and is exempt from City requirements and review as mandated by the General Statutes. The City of Asheville's Ordinance would not apply, but MSD is permitted by the State (NCDENR) and required to meet those standards.

Q. What about the money the City spends due to violations and developers not adhering to requirements?

A. We do have permitting fees in place that are intended to cover such things. However, for problematic projects that require a great deal of staff time, the review fees are not sufficient and the cost is supplemented tax dollars and utility fees.

Q. I own a small lot within the City (near a stream that will be regulated) and there is a rather large storm drain that takes up a lot of space. What can and can't I do as far as development on this property?

A. This property would have to go through a development review just like all other proposed developments in the City's jurisdiction and would be reviewed on a case by case basis. The buffer rule would apply – but as with all other properties, if the buffer rule creates a hardship, a taking or no practical alternative exists, a variance would be granted for the buffer width.

Q. Describe the process for a property owner with regard to hardships.

A. This would be a two-step process: Variance & Exception. The statute dictates when there is an exception and when something is generally recognized as a variance. A hardship must be shown to the Board of Adjustments if the owner is unable to prove it to staff. These would be specified by certain conditions. If staff finds conditions do exist, then there would be no discretion. If staff finds that conditions do not exist, then the property owner would petition the Board. The process and procedures for hardships are indicated in the current City UDO.

Q. The storm drain on my property overflows and causes flooding. If you're concerned about these things, why don't you improve them?

A. A portion of the Stormwater Utility Fee is used for improvements to the storm drain system. The city has an old system and steps are being taken to improve it.

Q. Can you cut trees overhanging the river and do you need to get a permit to cut these trees?

A. Cutting of undergrowth and dead or dying trees is not considered land disturbance. A permit would not be required, but the vegetation and trees in the aquatic buffer should remain intact. The buffer must be maintained the same as all other buffers must be maintained, per the current and pertinent sections of the UDO.

Q. What effect would this have on a property that meets the hardship requirements if it is sold, and how would it affect the property owner or developer?

A. If a variance is granted for a hardship, there would be no change if the property is sold. The hardship variance is applied to the land and not the property owner, so the rights would carry with the land.

Q. Can you have slides/photos/maps showing the full 50 ft buffer?

A. Yes.

Q. Will there be any readjustment of property value on the "taking" of land? Has there been any coordination with the County Tax Department or any compensation?

A. No.

Q. What authority mandates this Ordinance?

A. Senate Bill 1566 states that a city may adopt a Stormwater Ordinance. We cannot explain why it is written in discretionary language, while it is enforcing a mandate on the City of Asheville as a designated "regulated entity" required to adopt a Stormwater Ordinance by July 1, 2007. Note that General Assembly Session Law 2006-246 Section 10 states that an "entity may exceed," therefore allowing us to suggest more than the State required 30 ft buffer width.

Q. Regarding enforcement issues and streams still being polluted by sediment, what kind of fines will there be? How will they be increased or enforced more?

A. This topic will be more fully discussed at next Tuesday's meeting. **(Tuesday, August 14, 10 a.m.-noon. Topic: inspections and enforcement.)** Since both the Stormwater and Erosion Control Ordinances are being combined, generalizing is difficult. There are different enforcement rules for Stormwater and Erosion Control. With Erosion Control, the fines can go up to as much as \$5,000 per day per continuing violation. This is assessed by the Stormwater Administrator. With Stormwater, the fines can go up to as much as \$25,000 per day per continuing violation. There are guidelines for what can be fined and how much. The Stormwater Administrator will look at the impact of damage to lakes, streams and any other surface waters. If the person being fined is dissatisfied with decision of the Stormwater Administrator, he/she has a right to make an appeal to the Stormwater Administrative Committee.

Q. How do the enforcement and fines apply to the private property owner that is affected by erosion or stormwater from a development?

A. There is no relation to the fines the City may impose. The affected private property owner may bring a separate civil suit against the persons engaged in the activity causing the damage; that right was in place prior to Phase II.

Q. If this (buffers) is such a vital issue, would the staff recommend that all existing city properties and facilities voluntarily come into compliance as a standard for others to follow, realizing that parks, greenways, athletic fields, reserve center and ABC will be reduced or closed?

A. It would be too cost prohibitive for the city to retrofit all City owned properties. However, the city will be required to follow these standards in redeveloping or developing properties.

Q. How is the area or linear foot calculated for the 10% allowed encroachment to Zone B (outer 20' of buffer) when there is more than one stream/river on a property?

A. As long as the streams/riders are connected to the property, it is the 10% for both, not 10% each. The linear foot is computed for both water sources and 10% of that total is what is used.

Q. Due to all of the development over the years, Tunnel Road and Patton Ave are some of the worst areas for stormwater runoff pollution. How can you place buffers on these roads with all the development?

A. We cannot require these properties come into compliance until such time that the properties are redeveloped. As these properties are redeveloped, they will be required to comply with the ordinance.

Q. Can you estimate the increase in value of a property due to knowing the property next to it is covered by these rules?

A. Not at this time.

Q. Was anyone on the stakeholder group that helped devise this Ordinance a property owner within the City of Asheville?

A. Yes. Property owners from Crowfields Condominiums, Haw Creek and Riverlink were represented on the stakeholders group.

Q. Has anyone calculated how much acreage is covered by the new buffers?

A. We do not have that number. It would be very difficult to determine. There are approximately 200 miles of jurisdictional streams.

Q. Is there any exception for more urban areas?

A. No. Usually, more buffer is needed in urbanized areas.

Q. Do you know the impact that allowing land (in urban areas) to remain vacant would have on criminal activity?

A. No.